

**SPECIAL COMMITTEE ON RIVERFRONT ACTIVITIES
AND BASEBALL
(continuation of 11/03/2004 meeting)**

November 8, 2004

4:00 PM

Chairman Lopez called the meeting back to order.

The Clerk called the roll.

Present: Aldermen Lopez, Gatsas, Guinta (late), DeVries, Smith

Messrs: K. Clougherty, T. Clark, B. Brooks

Chairman Lopez addressed Item 3 of the agenda:

Continuing discussion relative to the closing on the Roedel property.

Kevin Clougherty, Finance Officer, stated Mr. Chairman as you know you spent a better part of the day in Lowell with the parties, we're just getting back now and the hotel piece is closed.

Alderman DeVries asked so there are no outstanding monetary issues or anything that we need to be advised of at this time? Everything is closed?

Tom Clark, City Solicitor, replied everything is closed, the parties are in agreement.

Mr. Clougherty stated as you recall, Alderman, we needed to get a letter from the stadium saying that we were not going to held to any financial liability for the late comers and we have that letter and we're closed.

Chairman Lopez stated thank you. I know you guys worked very hard. I know you've been down there all day and you closed today so that's great. Kevin I think you had another piece of business in reference to Chinburg.

Mr. Clougherty responded right. As you know we entered into agreements with the residential piece a couple of weeks ago and we had set a deadline for some things to happen with respect to that transaction. Eric has not been able to finish

his financing so he has gone beyond the deadline. He has sent us a letter informing us that he is beyond the deadline. At this point our recommendation would be to give him a couple of more weeks to try and get that concluded. He is working on it and our understanding is that they are close on that and we expect that it will be taken care of. What Eric doesn't want to do is, just to back up a little bit. We were supposed to receive \$794,194.32 on November 1st. If we didn't receive that, then there was a 5-percent penalty on that, which is about \$38,000 and there's also some interest associated with that. If he gets his payment to us in the next week or so, then we can calculate what the interest would be and do it all as part of the one transactions as opposed to having multiple checks and settlements going back and forth. He is responsible for it, he acknowledges that, it's more convenient for him if he doesn't have to do all the exchanges at this point.

Alderman Gatsas asked when was it due?

Mr. Clougherty answered November 1st, Alderman.

Alderman Gatsas stated it was due November 1st and by the sounds of the letter, are we staying...he hasn't been sent any invoice or...? Are we doing any invoicing with this project so that people are staying on top of when we're supposed to receive funds and not receive funds and...?

Mr. Clougherty answered we're not doing an invoicing. The responsibility is for them to make the payment, so we've already got that in the contracts, we're not invoicing in that sense. We are on top of it. Obviously we're coming to you telling you haven't got the payment.

Alderman Gatsas stated a question for the City Solicitor. Once we acknowledge past due payment that allows them in the future from my recollection of contracts, that once we allow it the first time it follows suite in ongoing situations.

Mr. Clark responded no, that is not true. If you give him a waiver on this one and allow him an extra two weeks to pay the money with his late fee, it does not have any effect on future payments.

Chairman Lopez asked does anybody have any objections to waiting a couple of weeks and getting all of the money at one time? I'm seeing no objections.

Alderman Gatsas asked when you say all of the money, why is this just supposed to be a portion?

Mr. Clougherty replied no, we're saying Alderman is that on November 1st we were supposed to get our check for \$794,000.00. He hasn't gone to the bank, gotten his financing done to bring that forward. If we didn't have the payment on November 1st, then there was a 5-percent penalty, which is about \$38,000. He's saying what he'd like to do is make that payment all at once rather than doing it in parcels. There's also the provision on there for an interest payment. Rather than trying to calculate it a number of times, it's just wait until the final date when we get the dollars we'll know what the outstanding is and we can do the calculation and do it at that time.

Alderman Gatsas asked explain to me the late payment again please.

Mr. Clougherty stated the late payment was if we got the payment after November 1st, there was a 5-percent penalty. So 5-percent of \$794,000 is what? \$38,000 roughly that was the penalty. There's also...

Alderman Gatsas asked is that on a per diem or is that a straight 5-percent?

Mr. Clougherty answered a straight 5-percent. And then there was an interest calculation and that was based on the default rate that I think was 11-percent. Depending on when he comes in with that, it will be up to this board whether you want charge them the 11-percent or you want to charge him 6-percent or you waive that fee. Those are things you can decide at that time, rather than our trying to go through and do a bunch of calculations and settlements and back and forth, it is an obligation of his and he has acknowledged that in the letter. What he wants to do is when he sends us the \$794,000, he'll send us the \$38,000 and the interest at that point.

Alderman Gatsas asked do you have a copy of the extension for the date...?

Mr. Clougherty asked of the extension beyond November 1st? There is no document. That's what you're talking about.

Chairman Lopez stated we're giving them opportunity to pay it all at once or demand the \$38,000 up front. He makes a payment then clears the \$794,000.

Alderman DeVries asked clarification please. What was the actual date that you wanted included? A couple of weeks?

Mr. Clougherty answered we thought that no later than the end of the month. We think he's going to come in sooner than that, but if you give him until the end of the month, and there's not something by then, then we're going to want to come back and talk to the committee.

Chairman Lopez stated December 1st. That will give us the basic money and the interest.

Alderman DeVries moved to waive receipt of payment from Eric Chinburg until December 1, 2004 in the amount of \$794,194.32, plus penalties totaling approximately \$38,000, and any interest charges. Alderman Smith duly seconded the motion. The motion carried with Alderman Gatsas and Alderman Guinta duly recorded in opposition.

Alderman Gatsas asked won't we be hearing something from Mr. Brooks? Wasn't it that situation that you were trying to get some clarity on that? Wasn't that why we brought this meeting forward to today about the \$66,000? The numbers?

Chairman Lopez stated that's all done.

Alderman Gatsas stated, Mr. Chairman, on another note of new business. Is there any way that we can get the company that did the engineering that had a question who they delivered something to even though they were employed by the City and whether we received it about the contamination issue? I know that there was something in the air that was being talked about that somebody was told about the contamination or a letter was sent?

Chairman Lopez stated Frank I think we've got to clear this up, because you keep saying there's a letter out there and I don't believe there is a letter. I think a lot of it was verbal. In conversations with the Director. I guess, Mr. Brooks, you started it. Why don't you come on up. Mr. Brooks started it by making a statement that he informed the City. Now the question is, is there a letter or was it all verbal or what's the procedure here?

Mr. Brooks stated while Payton was excavating for the roadway approximately the middle of August, they ran across I believe what appeared to be a capped area underneath the roadway, underneath the soil a couple of feet down. They needed to excavate down a couple of feet. At that point in time when that occurred, Haley and Aldrich was our geotechnical environmental engineer who was on the site monitoring all of the soils. Also Mike Castagna representative from the City was also on the site at the same time. It appeared that this was a capped area. They didn't know what to do so immediately they took soil samples and tested. What is was they took a look at the old plans of the area and determined it may have been the area that was capped in 1997 due to the old Danis fill of chlorinated solvents. I believe they continued, they left that area and continued excavating down the road a little bit and found some soil that had some odor to it at that point in time. Again, they took some samples and stopped construction, and Mike Castagna was

there. Mike is in the audience today and he can confirm the events that took place and that he was notified as a representative of the City that additional soil samples were taken. It's a normal procedure out there right now, I might say, that if I believe it's for every 400 cubic yards of material there's a soil sample taken. This was during the excavation of the baseball and excavation of the areas of the roadway that needed to be excavated. All of those were taken samples were taken by Haley and Aldrich to a testing lab to see what the results of those tests were. I don't believe in particular there was a letter. I believe there had be emails exchanged with the Highway Department and Haley and Aldrich, amongst ourselves discussing the fact that this old capping was found out there and construction had stopped until they found out more about what was there.

Frank Thomas, Public Works Director, stated I think the correspondence he may be referring to is a Haley and Aldrich correspondence from DES regarding what Bob Brooks just mentioned. First of all there was no secret regarding this contaminated material. As Bob mentioned, we knew immediately when it happened. Also there are weekly job meetings in the trailer down at the site. Representatives from all of the parties typically attend that job meeting. I believe that there were representatives from the hotel site that regularly attend these job meetings, so I think the knowledge of what was encountered was circulated around. Everybody knew about it. As far as copies of Haley and Aldrich's actual correspondence with the test results and the plan of attack, that was not circulated around other than to the City, to PB and the State. Now as I mentioned, it was no secret, if anybody wanted a copy of that information it would have been made readily available. So somebody after the fact saying that they didn't see the correspondence, didn't know about the contaminated material, I don't put a lot of credence into that.

Alderman Gatsas asked Frank, on the invoices? Have we been in receipt of all invoices to date that are outstanding on legal feels and everything else? Are there any legal fees outstanding on this? Because I noticed the Mr. McCabe's bill hasn't changed for the last eight months and I know he's been down here visiting us.

Mr. Clougherty answered I'd have to go back and look at it, Alderman. I can give you a report at the next meeting and bring you up to date. I just don't know today. I don't want to say that there aren't and then have something come in. So I can research that.

Mr. Thomas stated we haven't submitted to my office other than the original work that Walter McCabe did in developing various things early on.

Alderman Gatsas stated I would assume then upon the occupancy permit at Gill Stadium that maybe we could get something from Mr. McCabe that says all legal fees up to this date have been paid.

Mr. Clougherty responded as I said Alderman, I'll talk to him and I'll get something for the next meeting.

Alderman Gatsas asked you understand what I just asked for?

Mr. Clougherty replied yes.

Alderman Guinta asked has this committee or the full board asked for any report from first responders in the City identifying plans regarding how to address emergency situations when this area is up and running?

Mr. Thomas answered I'm not sure if there's been a plan developed per say, however, emergency fire access has been addressed from both north and south. Adequate fire/water protection has been included in this whole project. Issues such as fire access behind the hotel, behind the stadium; those issues were all addressed early on.

Alderman Guinta asked do you feel that's something that we should have the first responders develop?

Mr. Thomas replied I can talk to the Fire Department regarding that. Our concern in developing an adequate design was to make sure that the fire and police were brought into the process early on and as a result of that, the Fire Department did make some major comments and recommendations, such as access to the areas.

Chairman Lopez stated that is a good question and maybe what we should do because who is going to pay for the Police and all of that. Maybe at another committee meeting we can have the people here to give us the answers.

Alderman Guinta stated maybe I could make a motion and it could be seconded that a plan be developed and that we could work out the timeline details at the following meeting.

On motion of Alderman Guinta, duly seconded by Alderman DeVries, it was voted that an emergency plan be developed for the new stadium.

Chairman Lopez stated coordinate that Frank and have them work out for the next committee meeting as to...

Mr. Thomas stated to just add onto that. Part of the architectural design of any type of facility such as a stadium like this, the stair areas, the exit areas and whatnot have to be designed to allow egress from the facility according to codes and whatnot.

Chairman Lopez stated we understand that but I think what we're looking for is a response, so that the Alderman know what's going on and we're not going to be surprised when this thing is up and running that we're going to get hit with all kinds of fees and everything else. I think at the next meeting we'll handle that.

There being no further business to come before the committee, on motion of Alderman DeVries, duly seconded by Alderman Smith, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee